

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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OCT 25 1996

In the Matter of)
Streamlining Broadcast EEO)
Rules and Policies, Vacating the EEO)
Forfeiture Policy Statement)
and Amending Section 1.80 of)
the Commission's Rules To Include)
EEO Forfeiture Guidelines)

Federal Communications Commission
Office of Secretary

MM Docket No. 96-16

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REPLY COMMENTS OF
LINCOLN BROADCASTING COMPANY

Michael D. Berg
Leo R. Fitzsimon
VERNER, LIIPFERT, BERNHARD,
McPHERSON AND HAND
901 15th Street, N.W.
Washington, D.C. 20005-2301
(202) 371-6099

October 25, 1996

Its Attorneys

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REPLY COMMENTS OF LINCOLN BROADCASTING COMPANY

1. Lincoln Broadcasting Company ("Lincoln"),^{1/} licensee of television broadcast station KTSF (TV) ("KTSF"), San Francisco, California, by its attorneys, submits these Reply Comments in response to certain opening comments and the Commission's *Notice of Proposed Rulemaking* in the above-captioned proceeding (hereinafter "*Notice*").^{2/}

I. INTRODUCTION AND BACKGROUND

2. KTSF is a commercial, independent, family- and locally-owned television station which has been broadcasting in San Francisco since 1976. The station is one of the few in the United States that is principally owned and controlled by a woman. For more than two decades, KTSF has offered a rich diversity of programming, including news,

^{1/} The full name of the licensee is Lincoln Broadcasting Company, A California Limited Partnership.

^{2/} 11 FCC Rcd. 5154 (rel. Feb. 16, 1996).

information, public affairs and entertainment, in approximately 12 foreign languages (primarily Asian), and in English. In particular, during this time and continuing at present, KTSF has been the principal source of television programming in the multiple Asian languages spoken by hundreds of thousands of viewers throughout the San Francisco Bay Area. A substantial portion of these viewers either speaks no English or speaks English as a second language; for example, 32 % are considered "linguistically isolated."^{3/} Currently 100% of the station's prime time schedule is in languages other than English, and the station responds directly and uniquely to the needs and interests of multiple, diverse communities within its service area. The station, for example, produces and airs an award-winning daily hour-long newscast in Cantonese; this was the first live newscast of its kind in the nation. KTSF also produces locally and airs regular public affairs interview programs, in various Asian languages and English on a rotating basis, to meet the needs of historically underserved communities within the viewing audience. In these and other ways, KTSF, whose logo is "Your Window to the World," places extraordinary emphasis upon addressing community problems; serves as a bridge between minority communities and the larger society; and promotes the equal opportunity objective of diversity of programming and viewpoints.

^{3/} U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, 1990 U.S. Census. The Bureau defines a "linguistically isolated" household as one in which no person age 14 years or over speaks only English, and no person age 14 years or over who speaks a language other than English speaks English "very well."

3. KTSF also promotes vigorously the second goal of Commission EEO requirements: to deter discriminatory employment practices.^{4/} KTSF maintains an active, comprehensive EEO program directed to all the target categories. The station's employment profile generally reflects levels of total minority, Asian and Pacific Islander and female employment that far exceed the Commission's 50%-of-parity processing guidelines. These levels are at times far higher than full parity with workforce representation (i.e., twice the guideline percentages). Some of the station's employment opportunities require proficiency in a particular foreign language. Even where that is not the case opportunities at the station apparently are perceived as particularly attractive by those minority applicants who self-identify with the languages and cultures that are the focus of much of the station's programming. Recruitment of employees from other specific minority groups has at times proved more difficult despite the station's allocation of considerable staff time and resources to extraordinary outreach efforts to non-Asian minority referral sources as part of the station's EEO program.

4. As a result, KTSF submits these Reply Comments for the limited but crucial purpose of supporting opening comments that point to the need to include stations which broadcast substantially in foreign languages among the distinctly situated stations to which more flexible EEO standards apply.^{5/} KTSF is a "distinctly situated" broadcaster which

^{4/} Notice at 3.

^{5/} See Comments of the California Broadcaster's Association, Minnesota Broadcaster's (continued...)

advances, on a daily basis and as an integral part of its programming and business plan, the goal of the Commission's equal employment opportunity (EEO) requirements "to promote programming that reflects the interests of minorities and women in the local community in addition to those of the community at large."^{6/} As such Lincoln is concerned that proposals in the *Notice*, and in comments submitted by other parties, do not adequately take into account the circumstances of KTSF and other similarly situated foreign language television stations.

II. THE COMMISSION SHOULD RECOGNIZE AS "DISTINCTLY SITUATED" STATIONS THAT MEET THE EXISTING TEST OF FOREIGN LANGUAGE "SPECIALTY TELEVISION STATIONS"

5. In the *Notice*, the Commission stated its concern that "our EEO requirements may unnecessarily burden broadcasters, particularly licensees of smaller markets and other distinctly situated broadcasters."^{7/} The Commission sought "comment on how to improve our EEO Rule and policies to afford relief to licensees and permittees of small stations and other distinctly situated broadcasters without undermining the effectiveness of the [EEO] program."^{8/} The Commission discussed three possible factors to qualify a station for

5/(...continued)

Association, Missouri Broadcasters Association, and North Dakota Broadcaster's Association (hereinafter the "Associations") at 5 n.8; Comments of the Texas Association of Broadcasters at 11.

6/ *Notice* at 2-3.

7/ *Notice* at 2 (emphasis added).

8/ *Id.* at 10 (emphasis added).

relaxed EEO reporting requirements: the size of a station's staff; the size of a station's market; and the size of the local minority labor force.^{9/} In addition, the Commission proposed that a combination of each of these factors be considered.^{10/}

6. KTSF submits that foreign language stations should also qualify for the needed relief proposed by the Commission. None of the three criteria proposed in the *Notice* would be available to KTSF. This is despite the fact that programming diversity, which KTSF provides in abundance, is the principal goal of the Commission's EEO program.^{11/} Stations such as KTSF, which strive to provide diverse programming and serve significant segments of the television audience that may otherwise go unserved, should not be penalized by the Commission's EEO rules for doing so.

7. KTSF agrees with, and has experienced first-hand, the unique difficulties cited by the Comments of the California Broadcasters Association *et al.* that a foreign language format presents to strict compliance with each sub-requirement of the Commission's current EEO regime.^{12/} In particular, the "dominant minority" standard should not be applied to

^{9/} *Id.* at 11-12.

^{10/} *Id.* at 12.

^{11/} *See Florida State Conference of NAACP v. F.C.C.*, 24 F.3d 271, 272 (D.C. Cir. 1994).

^{12/} Comments of the Associations at 5 n8. The Texas Association of Broadcasters also points out the difficulties of complying with the Commission's EEO requirements when language proficiency is a factor in hiring. Comments of the Texas Association of Broadcasters at 11.

stations whose programming is directed to other minorities present in the service area. Nor should the Commission require compliance with processing criteria employment levels for each separate minority group, as long as the station maintains the required EEO program and efforts and there is no evidence of discrimination.

8. A ready-made, easily-administered standard exists for defining which stations broadcast enough foreign language programming to qualify for the new flexibility: at least one-third of the hours of an average broadcast week, and one third of weekly prime time hours, of foreign language programming. This has been used by the Commission historically to define qualification for "specialty station" treatment in the context of cable carriage of television signals,^{13/} and is also used currently in the same context by the U.S. Copyright Office.^{14/}

III. CONCLUSION

The Commission should recognize that KTSF and other television stations that program heavily in foreign languages have special circumstances regarding the recruitment and hiring of minority employees. Rather than apply all of the same guidelines that it does to non-specialty stations, the Commission should simply ensure that specialty format stations do not engage in unlawful discrimination; that they maintain an ongoing EEO recruitment program with respect to women and minorities; and that they meet the "total minority" (and

^{13/} See former 47 C.F.R. § 76.5(kk) (1981).

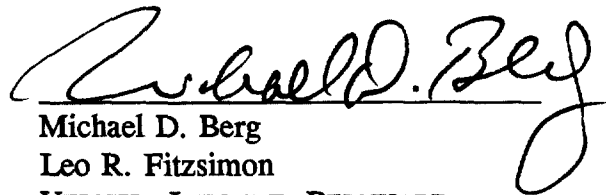
^{14/} 54 Fed. Reg. 38466 (1989).

all female) guidelines. But a station should not have to risk EEO sanctions "by the numbers"^{15/} for promoting program diversity and equal opportunity. For qualified foreign language television stations the Commission should not apply the "dominant minority" test, and should limit its EEO inquiry to the absence of discrimination and maintenance of an EEO program directed to all, without the risk of sanctions regarding numerical guidelines other than total minority (and female) employment. Any additional relief measures adopted by the Commission in this proceeding should also be applied to the distinctly situated stations described in these Reply Comments.

Respectfully submitted,

**LINCOLN BROADCASTING
COMPANY, A California Limited
Partnership**

By:



Michael D. Berg
Leo R. Fitzsimon
VERNER, LIIPFERT, BERNHARD,
MCIPHERSON AND HAND, CHARTERED
901 - 15th Street, N.W.
Suite 700
Washington, D.C. 20005-2301
(202) 371-6000

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Its Attorneys

^{15/} If one minority group is predominant in an area, the Commission expects a station to achieve 50% of parity with respect to that particular group. *Alabama and Georgia Broadcast Station Renewals*, 4 FCC Rcd 5968 (1991).

CERTIFICATE OF SERVICE

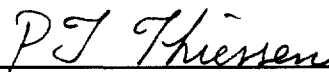
I, PJ Thiessen, a legal secretary with the law firm of Verner, Liipfert, Bernhard, McPherson & Hand, hereby certify that on this 25th day of October, 1996, I placed in the mail via first class, postage prepaid, copies of the foregoing Reply Comments of Lincoln Broadcasting Company in MM Docket No. 96-16, to the following:

Neal J. Friedman, Esquire
Pepper & Corazzini, L.L.P.
200 Montgomery Building
1776 K Street, N.W.
Washington, D.C. 20006

Attorney for Texas Association of Broadcasters

Gregg P. Skall, Esquire
Ronald G. London, Esquire
Pepper & Corazzini, L.L.P.
200 Montgomery Building
1776 K Street, N.W.
Washington, D.C. 20006

*Attorneys for California Broadcasters Association, Minnesota
Broadcasters Association, Missouri Broadcasters Association and North
Dakota Broadcasters Association*



PJ Thiessen